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March 6, 2007

**VIA ECF ELECTRONIC FILING AND HAND DELIVERY TO CHAMBERS**

Hon. Susan Illston  
United States District Judge  
**United States District Court**  
**Northern District of California**  
450 Golden Gate Avenue, 16th Floor  
San Francisco, CA 94102

**Re: *BART v. Spencer, et al. (Case No. C 04 4632 SI)***

Dear Judge Illston:

BART requests leave to submit by March 19, 2007 a response to defendants' "Submission Concerning Civil Penalties" (the "Submission"), filed yesterday.

On February 14, 2007, the Court granted BART leave to file an evidentiary submission in response to William Spencer's testimony earlier that day, bearing on the civil penalties that should be imposed if the jury found violations of the CFCA. BART made its submission on February 16th. On February 27th, the Court directed that, if defendants wished to respond to BART's submission, they do so by March 5th.

Including exhibits, defendants' Submission is 86 pages long. Further, the Submission does not simply identify evidence for the Court to consider in determining the amount of statutory penalties to be assessed. Rather, the defendants have taken advantage of the nearly three weeks since BART filed its narrowly-tailored evidentiary submission to extensively brief legal arguments that have never previously been raised in this case. (Defendants also have taken the opportunity to try for a third "bite at the apple," to limit the number of possible CFCA violations on a ground that the Court already has implicitly but necessarily rejected in previous rulings.) This is procedurally improper, and BART stands to be significantly prejudiced if it is not allowed to respond fully to defendants' arguments.

BART therefore requests that it be allowed to file, on or before March 19, 2007, a response to the defendants' Submission. This two-week period is warranted by the number and nature of the issues raised by defendants' Submission. Also, BART's counsel's schedule, including the currently-underway vacation until March 13th of the attorney who will be principally responsible for BART's response, makes the March 19th schedule practicably necessary.



Respectfully submitted,

Daniel T. Balmat